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DARRIN WESLEY HARRIS (40,636)
Name of Appellant, assignee or registered representative

DWH
Signature

February 23, 2004
Date of Signature

PATENT
PHB-34,314
(7790/84)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

MATTHEW P.J. BARKER

Serial No.: 09/478,467

Filed: JANUARY 6, 2000

For: RADIO COMMUNICATION
SYSTEM

Examiner: APPIAH, CHARLES N

Group Art Unit: 2682

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA. Koninklijke Philips Electronics N.V. is the ultimate parent of the assignee of record Philips Electronics North America Corporation, a Delaware corporation having an office and a place of business at 1251 Avenue of the Americas, New York, NY 10020-1104. Philips Electronics North America Corporation intends to further assign this application to Koninklijke Philips Electronics N.V.

2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 1-12 have been cancelled from the present application. Claims 13-29 are currently the claims pending in the present application, and are the claims on appeal. See, the Appendix. Claims 13, 16-19, 22, 23, 26 and 27 stand finally rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,356,759 to *Mustajarvi*. Claims 14, 15, 20, 21, 24, 25, 28 and 29 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view U.S. Patent No. 6,310,868 to *Esmailzadeh et al.*

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Claims 4 and 13 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Shiraki* and in further view of PCT Publication WO 00/13329 to *Barnard*. Claims 6, 8, 15 and 16 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Shiraki* and in further view of Great Britain Patent 2036447 to *McLean*.

4. STATUS OF AMENDMENTS

An after final request for reconsideration under 37 C.F.R. §1.116 was filed on 11/18/2003, but was not entered into the application by Examiner Appiah.

5. SUMMARY OF THE INVENTION

As illustrated in FIGS. 1 and 3, a radio communication system includes a primary station 100 and a secondary station 110. In operation, a secondary station 110 transmits a request 202 for resources to primary station 100, which transmits an acknowledgment 204 of the request 202 for resources from secondary station 110. Subsequent to a reception of the acknowledgement 204 by secondary station 110, control information is initially transmitted on an uplink control channel 206 and a downlink control channel 208 between primary station 100 and secondary station 110. Also subsequent to the reception of the acknowledgement 204 by secondary station 110, data is initially transmitted on an uplink data channel 210 from secondary station 110 to primary station 100. The initial transmission of data on the uplink data channel 210 is determinedly delayed by a delay

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302 until after the initial transmission of control information on the uplink control channel 206 and the downlink control channel 208. The delay is either pre-determined, determined dynamically by primary station 100 based on power levels in downlink control channel 208, or determined dynamically by secondary station 110 based on power levels in uplink control channel 206. See, U.S. Patent Application Serial No. 09/478,467 at page 6, lines 1-26; and page 7, lines 14-24.

6. ISSUE

Whether claims 13-29 are patentable over *Mustajarvi*.

7. GROUPING OF CLAIMS

Claims 13-29 should be considered in five (5) groups.

Claim group I includes independent claims 13, 19, 23 and 27, and dependent claims 14, 20, 24, 28 and 29.

Claim group II includes dependent claims 15, 21 and 25.

Claim group III includes dependent claims 16 and 22.

Claim group IV includes dependent claims 17 and 26.

Claim group V includes dependent claim 18.

8. ARGUMENTS

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"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Appellant respectfully traverses the §102(e) rejection of independent claims 13, 19, 23 and 27, because *Mustajarvi* fails to disclose, teach or suggest the following limitations of independent claims 13, 19, 23 and 27:

1. "wherein, subsequent to a reception of the acknowledgement by said secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between said primary station and said secondary station" as recited in independent claim 13;
2. "wherein, subsequent to a reception of the acknowledgement by the secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between said primary station and the secondary station" as recited in independent claim 19;

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3. “wherein, subsequent to a reception of the acknowledgement by said secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between the primary station and said secondary station” as recited in independent claim 23; and

4. “subsequent to a reception of the acknowledgement by said secondary station, initially transmitting control information on an uplink control channel and a downlink control channel between said primary station and said secondary station” as recited in independent claim 27.

Specifically, as illustrated in FIG. 3, *Mustajarvi* discloses an allocation of radio resources between a secondary station MS and a primary station BSS.

At a step 3-1, the secondary station MS transmits a first request for resources (e.g., one or more time slots) to the primary station BSS. At a step 3-2, the primary station BSS grants an Intermediate Assignment to the secondary station MS on a Packet Access Grant channel. At a step 3-3, the secondary station MS transmits an LLC frame which is relayed to the SGSN to inform the SGSN that secondary station MS is moved to a “Ready” state. See, *Mustajarvi* at column 2, lines 43-51.

Mustajarvi does not explicitly teach the Intermediate Assignment as being a form of an acknowledgement of the first request for resources. However, the Appellant

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respectfully asserts that the Intermediate Assignment must be a form of an acknowledgement of the first request for resources, because *Mustajavi* teaches the secondary station MS upon receiving the Intermediate Assignment will either (1) transmit data to the primary station BSS if the resources allocated by primary station BSS during step 3-2 are sufficient (i.e., control information for transmitting data was concurrently transmitted with the Intermediate Assignment) or (2) transmit a second request for additional resources when the resources allocated by primary station BSS during step 3-2 are insufficient. See, *Mustajavi* at column 2, lines 52-60.

If the secondary station SS transmits a second request for additional resources, then the primary station BSS transmits a Packet Resource Assignment to the secondary station SS during a step 3-4. See, *Mustajavi* at column 2, lines 53-61. *Mustajavi* does not explicitly teach the Packet Resource Assignment as being a form of an acknowledgement of the second request for additional resources. However, the Appellant respectfully asserts that the Packet Resource Assignment must be a form of an acknowledgement of the second request for additional resources, because *Mustajavi* teaches the second station will proceed to a step 3-5 to transmit data to the primary station BSS.

Unequivocally, control information as taught by *Mustajavi* is concurrently transmitted with the Packet Intermediate Assignment (3-2), and, if transmitted, the Packet Resource Assignment (3-4). Consequently, *Mustajavi* fails to disclose and teaches away

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from any transmission of the control information subsequent to a reception of an acknowledgement by secondary station MS.

Withdrawal of the rejection of independent claims 13, 19, 23 and 27 under 35 U.S.C. §102(e) as being anticipated by *Mustajarvi* is therefore respectfully requested.

Claims 16-18 depend from independent claim 13. Therefore, dependent claims 16-18 include all of the elements and limitations of independent claim 13. It is therefore respectfully submitted by the Appellant that dependent claims 16-18 are allowable over *Mustajarvi* for at least the same reason as set forth herein with respect to independent claim 13 being allowable over *Mustajarvi*.

Furthermore, at a step 3-5 as illustrated in FIG. 3, *Mustajavi* discloses an initial transmission of data on an uplink data channel from secondary station MS to primary station BSS subsequent to the reception of the acknowledgement by secondary station MS wherein the initial transmission of data on the uplink data channel is delayed until after the initial transmission of control information on the downlink control channel. However, *Mustajavi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is "determinedly" delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajavi* fails to teach or suggest "wherein said primary station dynamically determines the delay

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in the initial transmission of data on the data channel" as recited in dependent claim 16, "wherein said secondary station dynamically determines the delay in the initial transmission of data on the data channel" as recited in dependent claim 17, and "wherein said the delay in the initial transmission of data on the data channel is predetermined" as recited in dependent claim 18.

Withdrawal of the rejection of dependent claims 16-18 under 35 U.S.C. §102(e) as being anticipated by *Mustajarvi* is respectfully requested.

Claim 22 depends from independent claim 19. Therefore, dependent claim 22 includes all of the elements and limitations of independent claim 19. It is therefore respectfully submitted by the Appellant that dependent claim 22 is allowable over *Mustajarvi* for at least the same reason as set forth with respect to independent claim 19 being allowable over *Mustajarvi*.

Furthermore, *Mustajarvi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is "determinedly" delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajarvi* fails to teach or suggest "wherein said primary station dynamically

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determines the delay in the initial transmission of data on the data channel” as recited in dependent claim 22.

Withdrawal of the rejection of dependent claim 22 under 35 U.S.C. §102(e) as being anticipated by *Mustajarvi* is respectfully requested.

Claim 26 depends from independent claim 23. Therefore, dependent claim 26 includes all of the elements and limitations of independent claim 23. It is therefore respectfully submitted by the Appellant that dependent claim 26 is allowable over *Mustajarvi* for at least the same reason as set forth with respect to independent claim 23 being allowable over *Mustajarvi*.

Furthermore, *Mustajarvi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is “determinedly” delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajarvi* fails to teach or suggest “wherein said secondary station dynamically determines the delay in the initial transmission of data on the data channel” as recited in dependent claim 26.

Withdrawal of the rejection of dependent claim 26 under 35 U.S.C. §102(e) as being anticipated by *Mustajarvi* is respectfully requested.

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Claims 14 and 15 depend from independent claim 13. Therefore, dependent claims 14 and 15 include all of the elements and limitations of independent claim 13. It is therefore respectfully submitted by the Appellant that dependent claims 14 and 15 are allowable over *Mustajarvi* in view of *Esmailzadeh* for at least the same reason as set forth herein with respect to independent claim 13 being allowable over *Mustajarvi*.

Furthermore, *Mustajarvi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is "determinedly" delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajarvi* fails to teach or suggest "wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel" as recited in dependent claim 15.

Withdrawal of the rejection of dependent claims 14 and 15 under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Esmailzadeh* is respectfully requested.

Claims 20 and 21 depend from independent claim 19. Therefore, dependent claims 20 and 21 include all of the elements and limitations of independent claim 19. It is therefore respectfully submitted by the Appellant that dependent claims 20 and 21 are

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allowable over *Mustajarvi* in view of *Esmailzadeh* for at least the same reason as set forth herein with respect to independent claim 19 being allowable over *Mustajarvi*.

Furthermore, *Mustajarvi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is "determinedly" delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajarvi* fails to teach or suggest "wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel" as recited in dependent claim 21.

Withdrawal of the rejection of dependent claims 20 and 21 under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Esmailzadeh* is respectfully requested.

Claims 24 and 25 depend from independent claim 23. Therefore, dependent claims 24 and 25 include all of the elements and limitations of independent claim 23. It is therefore respectfully submitted by the Appellant that dependent claims 24 and 25 are allowable over *Mustajarvi* in view of *Esmailzadeh* for at least the same reason as set forth herein with respect to independent claim 23 being allowable over *Mustajarvi*.

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Furthermore, *Mustajavi* fails to discuss to any degree whether the initial transmission of data on the uplink data channel is "determinedly" delayed, such as, for example, by a pre-determination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel. Thus, *Mustajavi* fails to teach or suggest "wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel" as recited in dependent claim 25.

Withdrawal of the rejection of dependent claims 24 and 25 under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Esmailzadeh* is respectfully requested.

Claims 28 and 29 depend from independent claim 27. Therefore, dependent claims 28 and 29 include all of the elements and limitations of independent claim 27. It is therefore respectfully submitted by the Appellant that dependent claims 28 and 29 are allowable over *Mustajarvi* in view of *Esmailzadeh* for at least the same reason as set forth herein with respect to independent claim 27 being allowable over *Mustajarvi*.

Withdrawal of the rejection of dependent claims 28 and 29 under 35 U.S.C. §103(a) as being unpatentable over *Mustajarvi* in view of *Esmailzadeh* is respectfully requested.

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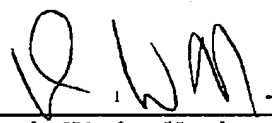
Dated: February 23, 2004

Respectfully submitted,
MATTHEW P.J. BARKER

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APPENDIX

13. A radio communication system, comprising:
- a secondary station for transmitting a request for resources;
 - a primary station for transmitting an acknowledgment of the request for resources;
 - wherein, subsequent to a reception of the acknowledgement by said secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between said primary station and said secondary station;
 - wherein, subsequent to the reception of the acknowledgement by said secondary station, data is initially transmitted on an uplink data channel from said secondary station to said primary station; and
 - wherein the initial transmission of data on the uplink data channel is determinedly delayed until after the initial transmission of control information on the uplink control channel and the downlink control channel.
14. The radio communication system of claim 13, further comprising:
- power control means for adjusting power levels of the uplink control channel and the downlink control channel prior to the initial transmission of the data on the uplink data channel.

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15. The radio communication system of claim 13, wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel.

16. The radio communication system of claim 13, wherein said primary station dynamically determines the delay in the initial transmission of data on the data channel.

17. The radio communication system of claim 13, wherein said secondary station dynamically determines the delay in the initial transmission of data on the data channel.

18. The radio communication system of claim 13, wherein said the delay in the initial transmission of data on the data channel is predetermined.

19. A primary station, comprising:

means for receiving a request for resources from a secondary station;

means for transmitting an acknowledgment of a reception of the request for resources;

wherein, subsequent to a reception of the acknowledgement by the secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between said primary station and the secondary station;

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wherein, subsequent to the reception of the acknowledgement by the secondary station, data is initially transmitted on an uplink data channel from the secondary station to said primary station; and

wherein the initial transmission of data on the uplink data channel is determinedly delayed until after the initial transmission of control information on the uplink control channel and the downlink control channel.

20. The primary station of claim 19, further comprising:

power control means for adjusting power levels of the downlink control channel prior to the initial transmission of the data on the uplink data channel.

21. The primary station of claim 19, wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel.

22. The primary station of claim 19, wherein said primary station dynamically determines the delay in the initial transmission of data on the data channel.

23. A secondary station, comprising:

means for transmitting a request for resources to a primary station;

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means for receiving an acknowledgment of a reception of the request for resources by the primary station;

wherein, subsequent to a reception of the acknowledgement by said secondary station, control information is initially transmitted on an uplink control channel and a downlink control channel between the primary station and said secondary station;

wherein, subsequent to the reception of the acknowledgement by said secondary station, data is initially transmitted on an uplink data channel from said secondary station to the primary station; and

wherein the initial transmission of data on the uplink data channel is determinedly delayed until after the initial transmission of control information on the uplink control channel and the downlink control channel.

24. The secondary station of claim 23, further comprising:

power control means for adjusting power levels of the uplink control channel prior to the initial transmission of the data on the uplink data channel.

25. The secondary station of claim 23, wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel.

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adjusting a power level of the uplink control channel prior to the initial
transmission of the data on the uplink data channel.

29. The method of claim 27, further comprising:

adjusting a power level of the downlink control channel prior to the initial
transmission of the data on the uplink data channel.

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26. The secondary station of claim 23, wherein said secondary station dynamically determines the delay in the initial transmission of data on the data channel.

27. A method of operating a radio communication system including a primary station and a secondary station, said method comprising:

transmitting a request for resources from the secondary station to the primary station;

transmitting an acknowledgment of the request for resources from the primary station to the secondary station;

subsequent to a reception of the acknowledgement by said secondary station, initially transmitting control information on an uplink control channel and a downlink control channel between said primary station and said secondary station; and

subsequent to the reception of the acknowledgement by said secondary station, initially transmitting data on an uplink data channel from said secondary station to said primary station,

wherein the initial transmission of data on the uplink data channel is determinedly delayed until after the initial transmission of control information on the uplink control channel and the downlink control channel.

28. The method of claim 27, further comprising: